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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,123	01/24/2004	Robert F. Buckman	212/551	6075

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EXAMINER

WIEKER, AMANDA FLYNN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/764,123

Applicant(s)

BUCKMAN ET AL.

Examiner

Amanda F. Wieker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it is less than the required length. Correction is required. See MPEP § 608.01(b).
3. The use of the trademark VELCRO® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner that might adversely affect their validity as trademarks.

4. The specification is objected to because the first paragraph on page 5 ends, mid-sentence.

Appropriate correction is required.

Claim Objections

5. Claims 1-4, 10, 11, 13, 17, 18, 19, 20 and 21 are objected to because of the following informalities:

- In claim 1, at line 13, there is insufficient antecedent basis for “the axial support”.
- In claim 1, at line 14, it appears that something should be inserted between “proximal” and “position”. It is unclear what is claimed by this limitation. The axial support member is fixed to the leg proximal what position on the leg?
- In claim 1, at line 18, there is insufficient antecedent basis for “the axial support member”.
- In claim 2, at line 1, there is insufficient antecedent basis for “said axial support”.
- In claim 3, at line 1, there is insufficient antecedent basis for “said axial support”.
- In claim 4, at line 2, it appears that --a-- should be inserted between “comprises” and “measurement”.
- In claim 10, at line 1, it appears that the word “comprise” should be in plural form.
- In claim 11, at line 2, there is insufficient antecedent basis for “said axial”.
- In claim 13, at line 1, it appears that the word “wherein” should be inserted between, “claim 12” and “the distal”.
- In claims 17 and 18, at line 3 in each claim, it appears that “comprising” should be replaced with --comprises--, for tense agreement.
- In claim 19, it appears that the claim should depend from either claim 17 or 18, not “19” (itself).
- In claim 20, at line 1, there is insufficient antecedent basis for “the axial support”.

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- In claim 21, "the proximal support mechanism" should be amended to --the proximal support means-- to provide adequate antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 12-14 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 2,604,889 to Erickson.

Erickson discloses an apparatus adapted for generating traction on a limb having a bone fracture, said apparatus comprising:

a backboard (42) adapted to accommodate a patient and support a patient under a substantial portion of the patient's body and a substantial portion of the patient's limb;

a distal limb support member (31), said distal limb support member adapted to secure the limb at a point distal to the bone fracture, said distal support member being distally movable relative to the backboard;

means for fixing the distal support member (35 clamped on 6, 43) in relation to the backboard and the limb;

proximal support means (24, 26) for securing the patient to the backboard at a point superior to the bone fracture.

The distal support member (31) is adapted to secure the patient's foot in fixed relation to the backboard, and the proximal support means (24) is adapted to secure the patient's chest or abdomen to the backboard, or to secure the patient's thigh (with 26) to the backboard.

The means for fixing the distal support member in relation to the backboard and the limb comprises a telescoping splint (11/8/9/5/6) and means for releasably fixing the telescoping splint to the backboard (43).

The telescoping splint further comprises a controllable, lockable, articulating joint (at 19).

An axial support member of the splint further comprises an adjustable standoff (43) to support the limb in the proper position.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 4,649,907 to Whitehead et al. in view of U.S. Patent Number 5,897,555 to Clyburn et al.

Whitehead et al. disclose a splint system (1) adapted for generating traction on a leg of a patient, said system comprising:

a telescoping splint (4/5) having a distal end (left in Figure 1) and a proximal end (right in Figure 1);

a distal limb support member (26) disposed on the distal end of the telescoping splint, said distal limb support member being adapted to accommodate a foot of the patient, limit proximal motion of the foot relative to the telescoping splint, and impart caudally directed force on the top of the foot (see Figure 2);

a proximal limb support member (42) disposed on the proximal end of the telescoping splint, said proximal limb support member being adapted to fix an axial support member of the splint (4/5) to the leg of the patient proximal its position on the leg;

means for securing (25) the telescoping splint in a telescoped length to apply traction to the leg of the patient.

The apparatus disclosed by Whitehead et al. disclose a measurement apparatus (81) to determine the amount of traction force being generated in the telescoping splint. The telescoping splint (4/5) comprises telescoping hollow structures (see Figure 4) that are selectively lockable and unlockable at a plurality of pre-determined lengths. Whitehead et al. also disclose at least one "intermediate support and stabilization member" (37).

The normal use of the device disclosed by Whitehead et al. incorporates the claimed method steps including:

expanding a telescoping splint (4/5) of a traction generating device (1);

locking the telescoping splint of the traction generating device at a desired length (with 25);

affixing a proximal support member (42) to a limb region closer to the body relative to the damaged region of said limb;

affixing a distal support member (26) to a limb region further from the body relative to the damaged region of said limb;

and applying tension on said damaged limb by generating compressive forces within said telescoping splint.

The normal use of the device disclosed by Whitehead et al. further comprises the step of measuring the amount of compressive forces in an axial support member of the splint, by reading a gauge (81). Whitehead et al. do not specify that the splint system be radiolucent and non-magnetic.

Clyburn et al. disclose a splint system for generating traction on a limb of a patient comprising a splint that is made of radiolucent, non-magnetic material such as 33% glass fiber reinforced PPA resin. Clyburn et al. specify that the splint be made of radiolucent, non-magnetic material to allow true images of the injured limb to be taken while the splint is providing tension to the limb.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the splint system disclosed by Whitehead et al., wherein the splint is made from a radiolucent, non-magnetic material, as taught by Clyburn et al., to allow true images of the injured limb to be taken while the splint is being worn.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitehead et al. in view of Clyburn et al. in further view of U.S. Patent Number 6,786,882 to Sliselman.

Whitehead et al. in view of Clyburn et al. disclose the previously described splint system adapted for generating traction on a leg of a patient comprising a telescoping splint (4/5) having a distal end and a proximal end. Whitehead et al. do not specify that the telescoping splint is collapsible to 50% or less of its fully expanded length.

Slushman discloses a splint system adapted for generating traction on a limb of a patient comprising a telescoping splint having a distal end and a proximal end. Slushman discloses that the telescoping splint comprises three section and collapses to at least 50% or less of its total expanded length, to allow compact storage of the splint system.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the splint system disclosed by Whitehead et al. in view of Clyburn et al., wherein the splint is collapsible to at least 50% of its fully expanded length, as taught by Slushman, to allow compact storage of the system.

11. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erickson in view of Clyburn et al.

Erickson discloses the previously described splint system for generating traction on a limb of a patient comprising a telescoping splint. Erickson does not specify that the splint system be radiolucent and non-magnetic.

Clyburn et al. disclose a splint system for generating traction on a limb of a patient comprising a splint that is made of radiolucent, non-magnetic material such as 33% glass fiber reinforced PPA resin. Clyburn et al. specify that the splint be made of radiolucent, non-magnetic material to allow true images of the injured limb to be taken while the splint is providing tension to the limb.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the splint system disclosed by Erickson, wherein the splint is made from a radiolucent, non-magnetic material, as taught by Clyburn et al., to allow true images of the injured limb to be taken while the splint is being worn.

12. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Erickson in view of Clyburn et al. in further view of U.S. Patent Number 6,045,525 to Chitwood.

Erickson in view of Clyburn et al. disclose the previously described splint system for generating traction on a limb of a patient comprising a telescoping splint, a distal support member and a proximal support means. Erickson does not specify that the proximal support means include a friction pad.

Chitwood discloses a system for generating traction on a patient comprising a distal support member (34) and a proximal support member, wherein the proximal support member comprises a friction pad (18, 19) affixed to a backboard (16) and a strap (24) to hold the user securely against the friction pad. Chitwood discloses that the combination of support members allow traction to be readily applied to the user.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the splint system disclosed by Erickson in view of Clyburn et al., wherein the proximal support means (26) include a friction pad affixed to the backboard to be engaged by the strap (26), as taught by Chitwood, to securely hold the user against the friction pad and allow traction to be readily applied to the user.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 8:30 - 6:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Amanda F. Wieker
Examiner
Art Unit 3743

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